

Remarks

The present response is responsive to the non-final Office Action mailed in the above referenced case on September 7, 2006. Claims 1-6, 8-31 and 33 are standing for examination.

Examiner states:

Claims 1-6, 8-31 and 33 are herein rejected under 35 U.S.C. 103(a) as being unpatentable over Beck et al. (US 6,332,154 B2) hereinafter Beck.

Applicant's response:

Applicant argues that the reference of Beck is improper. The Office action mailed 02/08/2006 included a 102(b) rejection relying on the art of Beck et al. (US006332154B2) filed 02/19/1999. The earliest publication date of Beck is 09/27/2001, according to records at the USPTO. Applicant points out that the 102(b) rejection was initially improper as the Manual for Patent Examining Procedure clearly states:

“35 U.S.C. 102 Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States...”

Applicant argues the art of Beck was not in a printed publication in this or a foreign country nor has the Examiner shown that the art of Beck was in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States. Beck was clearly published 09/27/2001, more than 8 months *after* the

filing date of applicant's invention, 01/09/2001. Therefore, the 102(b) rejection asserted by the Examiner was improper. Applicant believes the proper rejection would have been under 102(e).

The Examiner continued to use the art of Beck in a 103(a) rejection although the reference of Beck clearly falls under 103(c) 1, as follows:

103(c)

(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicant points out that both the present invention and the reference of Beck were commonly owned at the time of filing the present invention, and continue to be commonly owned. Therefore, the art of Beck must be removed.

Applicant further points out the following:

- 1) First Office Action mailed on 4/29/2004 rejected all of the claims relying on the art of Fawcett and Rakavy of record.
- 2) Applicant responds with amendment and arguments.
- 3) Second Office Action mailed 11/30/2004, made final, relying on the rejection and art made in First Office Action.
- 4) Applicant filed RCE, gave arguments and amended the claims.
- 5) Third Office Action mailed 6/30/2005. Examiner rejects claims relying upon new art of Miesbaur and Rakavy of record.
- 6) Applicant responds by going directly to Appeal process, filing an Appeal Brief arguing against Miesbaur and Ravaky. No amendments made to the claims.

- 7) A forth Office Action is mailed 02/08/2006, presenting a 112 rejection against claims 6 and 16 (a bit late in the process) and a 102 rejection presenting the new art of Beck.
- 8) Applicant responds by amending claims 6 and 16 to overcome the 112 rejection and presents arguments against Beck. Amendments did not affect the merit rejection.
- 9) A fifth Office Action mailed 09/07/2006 rejected all of the standing claims under 103(a) relying upon Beck.
- 10) Applicant herein presents a response proving the art of Beck is improper, along with arguments regarding the art of Beck.

Applicant respectfully requests the Examiner provide valid art that undeniably rejects all of the limitations of applicant's claims or allow the case, as clearly, applicant has been put under an unnecessary burden dealing with the Office Actions asserted by the Examiner.

Summary

As all of the claims standing for examination have been demonstrated to be patentable over the art of record, applicant respectfully requests reconsideration, and that the present case be passed quickly to issue. If there are any time extensions needed beyond any extension specifically requested with this amendment, such extension of time is hereby requested. If there are any fees due beyond any fees paid with this amendment, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully Submitted,
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